FOR IFS Review
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September 20, 2011

Appendix A
Exchange Integration Decision Points

Decision Point(s)*	LD 1497†	LD 1498*	Recommendations By Committee Reports‡	Advisory Committee Recommendation
A. Exchange Structure				
1. **Exchange Structure:** Whether to structure the Exchange as a governmental agency or a non-profit entity. ACA § 1311(d)(1). ***Either is permissible, 45 C.F.R. § 155.100(b) (prop.), but HHS notes that:*** • States should consider costs and benefits of using accountability structure in an existing agency versus the need to establish a governing body for an independent public agency. • Non-profits may operate without some restrictions but could face limitations in performing typically governmental functions. • HHS notes suggestions by commenters that States establish independent public or governmental agencies with flexible hiring & operational practices, or non-profit entities with governing bodies appointed and overseen by States.	Independent executive agency governed by a Board (*i.e.*, governmental agency). The members of the Board are appointed by the Governor (subject to review by the joint standing committee of the Legislature and confirmation by the Senate) and represent key stakeholders. §§ 7003(1) and 7004.	Independent executive agency (a) governed by a Board (*i.e.*, governmental agency). Nine members of which are appointed by either the Governor (5 members) or the Legislature (4 members) (subject to review by the joint standing committee of the Legislature and confirmation by the Senate) and 4 members of which are commissioners of related executive agencies, and (b) advised by a business advisory council whose members represent key stakeholders. §§ 7003(1); 7004; and 7013.	Independent or quasi-governmental agency, accountable to board and legislature, allowing the necessary interface with other state agencies. No recommendation about where to house the Exchange, but report notes that one logical place would be to house the Exchange in the Dirigo Health Agency since it already performs many of the required functions of the Exchange. (ACHSD p. 42-45) The Exchange should have strong legislative oversight (whether administered by an independent state agency or quasi-state agency) (JSC p. 5)	• Establish Exchange as a governmental agency within the Department of Professional and Financial Regulation. Proposed Legislation § 7003(1). • Exchange Commission should be appointed by the Governor and subject to confirmation by the Senate. Proposed Legislation § 7005(1). • Executive Director should be appointed by and serve at the pleasure of the Governor. Proposed Legislation § 7004. • Legislature should adopt legislation establishing the Exchange promptly so that Commission members can be appointed by the Governor no later than October 2012.

* In accordance with ACA § 1321(c)(1)(B), the Secretary of Health and Human Services ("HHS") must determine by January 1, 2013, whether the State's Exchange will be fully operational by January 1, 2014. Regulations recently proposed by HHS provide standards and processes for this determination, as well as guidance on other aspects of Exchange design. *See* Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, 76 Fed. Reg. 41,866 (proposed July 7, 2011) (to be codified at 45 C.F.R. pts. 155 and 156). Key provisions of the proposed regulations that are relevant to each of the decision points are discussed in this chart. In addition, a key part of the determination process is an Exchange Plan, which must be submitted to HHS in a form and manner that HHS will describe in later guidance. The Exchange Plan must include detailed information on how the Exchange will meet federal requirements. 45 C.F.R. § 155.105(b) (prop.). The Exchange will need to notify HHS in writing before making any significant changes to its Exchange Plan. 45 C.F.R. § 155.105(e) (prop.).

† Unless otherwise indicated, section numbers in the columns for the proposed legislation and the Washington legislation refer to sections of the respective bill or law. Citations elsewhere indicate whether they refer to the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010) ("ACA") or to the appropriate section of 45 C.F.R. part 155 (prop.), as proposed in *Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans*, 76 Fed. Reg. 41,866 (proposed July 7, 2011) (to be codified at 45 C.F.R. pts. 155 and 156).

‡ "ACHSD" refers to *Options and Opportunities for Implementing the Affordable Care Act in Maine*, Advisory Council on Health Systems Development (Dec. 17, 2010). "JSC" refers to *Final Report of the Joint Select Committee on Health Care Reform Opportunities and Implementation* (Dec. 2010).

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76 Fed. Reg. at 41,870.				
2. **Interstate Exchanges:** Whether to form regional exchanges or establish interstate coordination for certain functions. ACA § 1311(f). ***Regional exchanges are permissible, but--*** • the regional exchange must "span two or more States" (that need not be contiguous). 45 C.F.R. § 155.140(a)(1) (prop.). • a single plan for the regional Exchange must be submitted and approved by HHS prior to operation. 45 C.F.R. § 155.140(a)(2) (prop.). • the regional exchange must perform the functions of a SHOP for its area. 45 C.F.R. § 155.140(c)(2) (prop.). The entire geographic area of a state must be covered by one or more Exchanges but only one Exchange may operate in each geographically distinct area. 76 Fed. Reg. at 41,871.	Does not provide for any regional exchange or interstate coordination.	Does not provide for any regional exchange or interstate coordination.	Operate own exchange initially but explore opportunities for regional exchange or coordination of back office functions with other New England states. (JSC p. 5, 14) Regional exchange unlikely to be initially desirable because more difficult to tailor to needs of Maine residents, synchronize the exchange with existing insurance market and Medicaid programs, and timely implement the exchange. However, regionalization of certain aspects of the exchange (*e.g.*,. administrative "back office" functions) may be initially feasible and beneficial. (ACHSD p. 40-42)	No regional Exchange. However, recommend that the state continue to participate in multi-state collaboratives to learn how other states are implementing ACA requirements.
3. **Single or Dual Exchange(s) for Individuals & Small Employers:** Whether to operate a unified Exchange for individuals & businesses or two separate exchanges: the SHOP Exchange for small employers and the Exchange for individuals. If operating a single exchange, it must have adequate resources to assist both the individuals & employers. ACA § 1311(b). ***A state may elect to create an independent governance and administrative structure for the SHOP if the state ensures that the SHOP coordinates and shares relevant information for the individual Exchange operating in the same area. 45 C.F.R. § 155.110(e)(1) (prop.).*** ***If a state chooses one governance/ administrative structure for both the individual Exchange and SHOP, it must ensure that the Exchange has adequate resources to assist individuals and small employers. ACA § 1311(b)(2); 45 C.F.R. § 155.110(e)(2) (prop.).***	Authorizes Exchange to establish SHOP Exchange. § 7008(2)(I).	Authorizes Exchange to establish SHOP Exchange. Also authorizes Exchange to use access payments (currently, the Dirigo assessment) to provide subsidies for small businesses to purchase coverage through the SHOP exchange. § 7008(2)(N).	One exchange for individuals, families, and small employers, but recognize different needs of the groups. (JSC p. 5) Separate lines of business should be established within the unified exchange to serve individuals and businesses to ensure the viability of both programs and that the priorities of each group are met. (ACHSD p. 38-40) Identify as a policy option using Dirigo assessment to assist sole proprietors and small businesses in purchasing coverage for employees (JSC p. 15; ACHSD p. 67)	State should establish one unified Exchange that includes a SHOP program to meet the needs of small employers. Proposed Legislation § 7008(2)(I).

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HHS indicates a preference for Exchange to use same governance for both Exchange and SHOP. 76 Fed. Reg. at 41,872-73.				
4. **Separate Risk Pools for Individual and Small Group Markets:** Whether to merge risk pools for rating the individual and small group markets. ACA § 1312(c). ***If risk pools are not merged, SHOP must permit each qualified employee to enroll only in qualified health plans in the small group market. 45 C.F.R. § 155.705(b)(8) (prop.). HHS notes that the purpose of this requirement is to help prevent adverse selection. 76 Fed. Reg. at 41,887.***	--	--	Consider merging risk pools that are currently separate for these markets, depending on outcome of actuarial study. (JSC p. 13)	The risk pools for rating the individual and small group markets should not be merged.
5. **Insurance Options Available to Employers:** SHOP must allow employers to select a level of coverage, from which employees may choose any qualified health plan at that level (*i.e.*, employee choice within a tier). 45 C.F.R. § 705(b)(2) (prop.); *see also* ACA § 1312(a)(2)..§ Whether SHOP should allow employers to make other choices, such as to select specific plans in which employees may enroll. ***The state must determine whether the Exchange will also allow:*** • ***employees to choose any qualified health plans offered in SHOP at any level;*** • ***employers to select specific levels from which an employee may choose a qualified health plan;*** • ***employers to select specific qualified health plans from different levels of coverage from which an employee may choose; or*** • ***employers to select a single qualified health***	Allows an employer only to specify a level of coverage so that any of its employees may enroll in any qualified health plan offered through the SHOP exchange at the specified level of coverage. § 7008(2)(I).	Allows an employer only to specify a level of coverage or amount of contribution toward coverage so that any of its employees may enroll in a qualified health plan offered through the SHOP exchange at the specified level of coverage or cost of coverage. § 7010(2)(N)..††	--	The Exchange should have the authority to determine whether any additional options should be made available to employers, and the Exchange should not preclude an employer from selecting a single qualified health plan for its employees. Proposed Legislation § 7008(2)(I).

§ The proposed regulations require the Exchange to provide aggregate billing for insurance premiums and allocate the employer's payments among the insurers whom its employees have selected. *See* 45 C.F.R. § 155.705(b)(4) (prop.); 76 Fed. Reg. at 41,879, 41,887. In addition, employers will want the coverage options that are available in the SHOP to also be available in the individual market to facilitate the frequent enrollments/dis-enrollments that occur in the small group market.

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plan to offer employees. ***See 76 Fed. Reg. at 41,886 (but inviting comment on whether allowing the last option is permissible under ACA)..**** ***ACA § 1312(f)(2).***				
6. **Small Employers:** Whether to use the ACA definition of small employer (1-100 employees) or elect the option to use 50 employees as the cut-off for small group market plans until 2016. ACA §§ 1312(f)(2)(A); 1304(b)(2)-(3).	Uses 50 employees as the cut-off; does not provide for an automatic increase to 100 effective January 1, 2016. § 7002(13).	Uses 50 employees as the cut-off; does not provide for an automatic increase to 100 employees effective January 1, 2016. § 7002(13).	Identifies issue and notes that under current Maine law, small group is defined as an employer with 50 or fewer employees. No recommendation regarding whether to change definition to 100 now or wait until 2016. (JSC p. 12)	The State should continue to define the small group market as employers with up to 50 employees until 2016. Proposed Legislation § 7002(15).
7. **Counting Employer Size:** What legal standard to use for counting employer size, and whether this standard should be included in the State legislation or delegated to the Exchange. ACA § 1304(b); HHS Bulletin 99-03. ***All employees, including part-time and seasonal employees, would need to be counted. 76 Fed. Reg. at 41,887-88. Part-time workers would be counted in the same manner as full-time workers, while seasonal employees would be counted proportionately to the number of days they work in a year.*** **Id.** ***HHS requests comments regarding whether states should be permitted to impose more specific rules for determining the number of employees.*** **See id.** ***Exchange is permitted to either rely on employer self-reporting or require more stringent determination of employer size.*** **See** ***76 Fed. Reg. at 41,888.***	Uses NAIC model language based on HHS guidance which provides for all employees to be counted, including part-time employees and employees who are not eligible for coverage through the employer. § 7002(13).	Uses NAIC model language based on HHS guidance which provides for all employees to be counted, including part-time employees and employees who are not eligible for coverage through the employer. § 7002(13).	--	The enabling legislation should provide for the size of an employer to be determined in accordance with Maine law except to the extent federal law requires a different standard to be used. Proposed Legislation § 7002(15)(C).

†† The approach in LD 1498 with regard to insurance options available to employers appears permissible, so long as the Exchange *at least* allows the employer to specify the level of coverage.

** ACA includes conflicting provisions, but it appears to also allow Exchanges to offer group health plans to employers through the SHOP exchange. HHS agrees that it is probably permissible for Exchanges to offer employers a single group health plan but invites comment on this question. 76 Fed. Reg. at 41,886. This option is attractive to employers because it would allow an employer to select one health plan for its employees that would be rated solely on its own employee group.

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8. **Large Employers:** Beginning in 2017, the State may allow issuers of large group health insurance to participate in the Exchange. If so, the exchange must allow large employers—*i.e.*, employers who employ an average of at least 101 employees--to participate in the Exchange. ACA § 1312(f)(2)(B).	--	--	--	The State should not consider allowing insurers of large group plans to participate in the exchange until closer to 2017.
9. **Automatic Repeal:** Whether the Exchange will continue to exist if the provisions of the Federal Act relating to health benefit exchanges are repealed.	--	--	--	If there is a U.S. Supreme Court decision overturning all or part of ACA or if the ACA is otherwise repealed in whole or in part, the Exchange should be required to recommend to the Legislature and the Governor, within 60 days of the decision, whether to continue the Exchange. Proposed Legislation, Section 5.
B. Board Structure and Operations‡‡				
10. **Exchange Governance—Duties:** The duties and other responsibilities of any board that will have day-to-day responsibility for carrying out the duties and responsibilities of the Exchange. ACA § 1311.	Board Authority: Responsible for operation of Exchange and exercising duties and powers of Exchange (described below in "Exchange Duties"). Within 6 months of appointment, must submit to the Superintendent of the Bureau of Insurance (the "Superintendent") a plan of operation for the Exchange that will not take effect until it is approved by the Superintendent. If Board fails to submit a plan of operation, the Superintendent may, after notice and hearing, determine a plan of operation for the Exchange that will remain in effect until the Board submits a plan of operation that is approved by the Superintendent. § 7006.	Board Authority: Responsible for operation of Exchange and exercising duties and powers of Exchange (described below in "Exchange Duties").	Recommendation that, at a minimum, the Board of Directors operates in the public interest and no board member realizes personal financial gain. Notes that balance should be struck between the Board and government's policy-setting responsibilities and the Exchange staff's administrative responsibilities. Also notes that if the Exchange is operated by an executive agency, an advisory board could provide input and advice on exchange polices. (ACHSD p. 43-44) Exchange should have strong legislative oversight (JSC p. 5)	The powers and duties of the Exchange should be specified in the enabling statute. Proposed Legislation § 7008.

‡‡ HHS indicates that changes to Exchange governance structure and operations would be a "significant change" to an Exchange plan that would require advance notice and approval by HHS in writing. See 45 C.F.R. § 155.105(e) (prop.); 76 Fed. Reg. at 41,871.

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11. **Exchange Governance—Board Appointment and Reappointment Process:** The process for appointing members of the board or other entity that will govern the Exchange. ACA § 1311.	Board Member Appointment Process. Ten members appointed by Governor subject to Senate confirmation and review by joint standing committee of Legislature with health insurance jurisdiction. Board Term. 6 years, up to 2 consecutive terms; may serve until replacement appointed and qualified. § 7004(2). Chair. Governor appoints 1 member as chair. § 7004(3).	Board Member Appointment Process. Nine voting members. Five appointed by Governor and 1 appointed by each the President of Senate, Speaker of House, President of Senate from Senate Minority Leader recommendation, and Speaker of House by House Minority Leader recommendation. § 7004(1)(A). Board Term. 3 years, although to a achieve a staggered board, 2 of the members will serve an initial term of 1 year, 3 members will serve initial terms of 2 years, and 4 members will serve initial terms 3 years. §§ 7004(3); B-3. Voting members may serve up to 2 consecutive terms and may serve until a replacement is appointed and qualified. § 7004(3). Chair. Governor appoints 1 voting member as chair. § 7004(4).	--	• The Exchange should be governed by an Executive Director. A Commission should advise on technical matters, such as critical issues or matters that require a particular expertise, knowledge, or skill. (Note: The Advisory Committee's members do not unanimously agree that the Commission's authority should be limited to advising on technical matters.) • The Commission should include 9 voting members appointed by the Governor and subject to confirmation by the Senate. Proposed Legislation § 7005(2). • The Commission should also include 2 ex officio, non-voting members: Commissioner of PFR and the DHHS Commissioner (or their designees). Proposed Legislation § 7005(2). • The Commission members should be permitted to serve 3-year terms but should be prohibited from serving more than 2 terms. Proposed Legislation § 7005(4). • Initial terms of Commission members will be staggered. Proposed Legislation § 7005(4).
12. **Exchange Governance—Board Member Composition:** ***Board may not be made up of a majority of voting representatives with a conflict of interest, including representatives of health insurance issuers, agents, brokers, or any other individual licensed to sell health insurance. See 45 C.F.R. § 155.110(c)(3) (prop.).*** ***HHS invites comment on whether categories of potential conflicts should be further specified and what types of representatives have potential conflicts of interests. 76 Fed. Reg. at 41,872.*** ***A State may adopt more stringent or specialized conflict of interest requirements than those used in connection with regular governmental operations. 76 Fed. Reg. at 41,872.***	Board Member Composition. Two members representing each insurers and insurance producers; 1 member representing each hospitals, physicians, nurses, large employers, and small employers; and one member who purchases individual health insurance (total of 10 members). § 7004(1).	Nonvoting Members. Four nonvoting ex officio members (Commissioner of Professional and Financial Regulation, Commissioner of HHS, Commissioner of Admin. and Financial Services, and State Treasurer). § 7004(1)(B). Voting Members. • One member must serve as chair of the Medicaid advisory committee within DHHS. § 7004(2)(B)(1). • Two members must represent consumers selected from stakeholder nominations. § 7004(2)(B)(2). • Voting members may not be: • employed by, a consultant to, a member of the board of directors of,		The Commission should be comprised of the following representatives: • employer with not more than 50 employees • employer with more than 50 but not more than 100 employees • insurer • broker • provider • federally recognized Indian tribe • consumer • 2 at large (subject to federal conflict of interest rules) Proposed Legislation § 7005(2)(B).

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		affiliated with or otherwise a representative of a carrier, insurer, agent or broker, health care provider, health care facility, health clinic; • a member, board member, or employee of a trade association of carriers, health facilities, health clinics or health care providers; or • a health care provider, unless the member receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice. § 7004(2)(C). • Notwithstanding any other provision, a current or former member of Board of Trustees of Dirigo may also be member of Board. § 7004(2)(D).		
13. **Exchange Governance—Board Member Qualifications:** Whether to specify qualification requirements for the Board in the enacting legislation. ***A majority of the voting members must have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured. 45 C.F.R. § 155.110(c)(4) (prop.); see also 76 Fed. Reg. at 41,872 (inviting comment on the types of representatives that should be on the Board to ensure necessary technical expertise).***	LD 1497 does not include experience requirements for Board members that would be necessary to comply with 45 C.F.R. § 155.110(c)(4) (prop.).	Voting Members. • Six voting members must be qualified in at least 2 of the following areas: health care purchasing, individual health coverage, small group coverage, MaineCare program; health benefit plan administration, administering a public or private health care delivery system, health care financing, or health policy and law. § 7004(2)(A).		The Commission composition should comply with federal requirements for experience. Proposed Legislation § 7005(3).

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14. **Exchange Governance—Operations:** Rules regarding how the Board will operate. ACA § 1311. ***Meetings: Board must hold regular public meetings that are announced in advance. 45 C.F.R. § 155.110(c)(2) (prop.).*** ***Conflicts of Interest:*** • Exchange must have in place and make publicly available a set of governance principles that includes ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interest. 45 C.F.R. § 155.110(d)(1) (prop.). • Exchange must implement procedures for disclosure of financial interests by members of the Board. § 155.110(d)(2); *see also* 76 Fed. Reg. at 41,872 (inviting comment on this proposal and whether additional detail should be proposed).	Voting. Quorum of 6, and 6 affirmative votes required for any board action. § 7004(5). Meetings: Monthly or at times called by Chair or Executive Director. All meetings public. § 7004(7). Other..§§ • Members compensated for expenses incurred in performance of their duties. § 7004(6). • Members' personal liability is limited if acted in accordance with scope of power and duties, and members are indemnified for expenses actually and necessarily incurred in defense of any action or proceeding to which they are made a party by reason of their authority with respect to the Exchange. §§ 7005(1), (2).	Voting. Quorum of 5 voting members, and majority vote of members required for any board action. § 7004(6). Meetings: Monthly or at times called by Chair or Executive Director. All meetings public. § 7004(8). Other. • Members compensated for fulfilling board duties in accordance with board bylaws. § 7004(7). • Members' personal liability is limited if acted in accordance with scope of power and duties, and members are indemnified for expenses actually and necessarily incurred in defense of any action or proceeding to which they are made a party by reason of their authority with respect to the Exchange. § 7005. • Members and employees of the Exchange and their spouses and children may not receive any direct personal benefit from the activities of the Exchange in assisting any private entity, except they may participate in the Exchange on the same terms as others. Provision does not apply to any entities that employ members and staff (and their families) if the relationship is made known to the Board and the member does not vote on matters relating to the entity's participation in the Exchange. § 7006.	--	The Commission should be required to operate in accordance with federal and state law. Proposed Legislation § 7005(10).

§§ Note that LD 1497 does not provide for conflict of interest standards for the Exchange or its Board.

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15. <u>Exchange Governance—Advisors</u>: Whether the Board is required or permitted to appoint advisors. ACA § 1311. Whether the legislation should specify how the Exchange is to take into account stakeholder interests. ***ACA provides that Board must regularly consult with certain stakeholders. ACA § 1311(d)(6). In addition to the statutorily listed stakeholders (educated health care consumers who are enrollees, enrollment facilitators, advocates for hard-to-reach populations, small businesses and self-employed individuals, and State Medicaid and CHIP agencies), HHS would add the following:*** • federally-recognized tribes, • public health experts, • health care providers, • large employers, • health insurance issuers, & • agents and brokers. 45 C.F.R. § 155.130 (prop.). (Note: the Board need not necessarily appoint advisory committees to meet this requirement, but it is one avenue for compliance.)	--	<u>In General.</u> Board may appoint advisory committees (with no compensation but reimbursed for necessary expenses). § 7010(10). <u>Business Advisory Council</u>. • Council to advise and support the Exchange on matters referred to it by the Board or the Executive Director and serve as a liaison between Exchange and consumers. § 7013(7). • Volunteer members appointed by Governor with 3 members representing providers (1 physician, 1 hospital rep, and 1 non-physician health care practitioner) and 1 member representing each consumers, large employers, small employers, carriers, and producers (total of 8 members). § 7013(1). • Council members serve 5 year terms, except to achieve a staggered Council, 3 of the members will serve an initial term of 3 years, 3 members will serve initial terms of 4 years, and 2 members will serve initial terms of 5 years. § 7013(2); B-4. • Council members serve as volunteers without compensation. § 7013(3) • Council will meet at least 4 times a year; a quorum is a majority of the members of the Council. § 7013(4), (6). • The Council shall annually choose one of its members to serve as chair for a one year term. § 7013(5).	--	The enabling legislation should allow the Exchange to establish advisory committees and should require the Exchange to establish an advisory committee for federally-recognized Indian tribes within the state. Proposed Legislation § 7008(2)(P).

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16. **Staff and Leadership:** Authority and procedures for hiring staff and procurement resources. ACA § 1311.	Requires Exchange Board to submit to Superintendent a plan of operation for the Exchange, including, *inter alia*, procedures for selecting and hiring an Executive Director. § 7006(2)(B). Executive Director shall prepare budget at Board's direction. § 7008(3).	Board to appoint Executive Director to: • serve as liaison between Board and Exchange, secretary and treasurer to the Board; • manage Exchange's programs and services; • employ or contract for personnel or services; • approve accounts; and • perform other duties prescribed by Board. § 7008. Executive Director shall prepare budget at Board's direction. § 7010(3). Executive Director of Dirigo Health will provide initial staffing assistance to the Exchange, until the appointment of the Executive Director. § B-5(2). In hiring and contracting, preference may be given to Dirigo Health employees. § B-5(2). Board must submit application to HHS for Exchange planning and implementation grant funding. § B-5(3).	--	The Commission should recommend candidates for Executive Director to the Commissioner of PFR and the Governor. The Governor should have the authority to appoint an Executive Director, subject to confirmation by the Legislature. Proposed Legislation § 7004.

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C. Exchange Functions				
17. <u>Exchange Operating Model</u>: What operating model to choose (e.g., "active purchaser" model, "open marketplace" model, etc.) for certifying plans to participate on Exchange.*** § 1311. Whether the operating model should be specified in the legislation or delegated to the Exchange. ***HHS identifies different models for choosing qualified health plans and gives Exchanges the "discretion" to choose strategy for certifying plans. Exchange need not be limited to one strategy.* See *76 Fed. Reg. at 41,891-92.***	Requires Exchange Board to submit to Superintendent a plan of operation for the Exchange. § 7006(2).	Requires Exchange Board to selectively contract for health care coverage and "seek to contract with carriers so as to provide health care coverage choices that offer the optimal combination of choice, value, quality, and service." § 7010(2)(I).	Exchange should take active role in selecting plans to contain costs and ensure quality. Exchange has role in standardizing plans to make consumer selection easier. (JSC p. 5)	The Exchange should be an open marketplace – if issuer/QHP meets minimum standards, it will be permitted to participate on Exchange.
18. <u>Exchange Duties</u>: Whether to assign additional duties to the Exchange beyond the minimum required in the Act. § 1311(d)(4). The minimum required duties appear in the "Appendix" to this chart. ***HHS "encourage[s] States to consider supplemental standards or functionality for their Exchanges that benefit consumers and businesses" and invites comments regarding such functions. 76 Fed. Reg. at 41,875.***	Specifies Exchange powers and duties, which are limited to those minimum duties required by ACA (as reflected in ACA § 1311(d)(4) and the NAIC model legislation). § 7008(2). However, an initial duty of the Exchange Board is to submit to Superintendent a plan of operation for the Exchange that includes procedures for: • operation of the Exchange, • selecting and hiring an Executive Director, • creating a fund, managed by the Board, for administrative expenses, • handling, according and auditing of money and other assets of the Exchange, • a program to foster public awareness of the Exchange and to publicize the eligibility requirements and enrollment procedures for coverage and subsidies under the Exchange,	Specifies minimum Exchange powers and duties (as reflected in ACA § 1311(d)(4) and the NAIC model legislation). § 7010(2). In addition to minimum duties: • Moves the Maine Quality Forum (currently within Dirigo Health) to within the Exchange. § A-38. • Requires Exchange to coordinate eligibility/enrollment process with other health care coverage programs, including MaineCare and the basic health program, if established. § 7010(2)(H). • Requires Exchange to determine minimum requirements for carrier participation and standards & criteria for selecting qualified plans offered through Exchange. § 7010(2)(I). • Requires Exchange to consider establishment of basic health program for eligible individuals. § 7010(2)(O). • Prohibits Exchange toll-free telephone	The exchange must be more than just a website—individuals and small businesses seeking assistance must have opportunity for face-to-face interaction. Local access and consumer outreach are important functions for the exchange. The exchange should be accessible for providers and minimize their costs and administrative burden. (JSC p. 5-6)	No additional duties should be assigned to the Exchange beyond the minimum federal required duties. Proposed Legislation § 7008.

*** The more active of a role the Exchange plays in administering plans, the more attractive the Exchange will be to small employers. Small employers will be more inclined to purchase coverage through the Exchange if it is convenient and shoulders administrative burdens that would normally need to be performed by the employer, such as processing enrollments and dis-enrollments and ensuring compliance with applicable laws, such as ERISA and the ADEA. The Exchange will also be more likely to attract small employers if it facilitates an employer's receipt of the federal tax credit.

Decision Point(s)*	LD 1497†	LD 1498*	Recommendations By Committee Reports‡	Advisory Committee Recommendation
	• requirements that only licensed producers may enroll individuals and small employers in qualified health plans offered through the Exchange • requirements to assist individuals in applying for premium-tax credits and cost-sharing reductions, and • any matters necessary and proper for the execution of the Board's powers, duties, and obligations. § 7006(1).	hotline from being automated. § 7010(2)(B). • Requires Exchange to provide, in each region of the State, a choice of qualified health plans at each of the five levels. § 7010(2)(J) • Requires each participating carrier to offer at least one product in all five coverage levels. § 7010(2)(K) • Requires carriers to offer same products outside Exchange as those offered inside Exchange. § 7010(2)(L).		
19. <u>Inter-agency Coordination</u>: Responsibilities of State agencies coordinating with the Exchange. ACA § 1311. ***HHS invites comments on how to implement or construct a partnership model for state and federal exchanges to share information and ideas. 76 Fed. Reg. at 41,871.*** ***HHS "encourage[s] the Exchange and the State department of insurance to collaborate in" rate increase justification process.* See *76 Fed. Reg. at 41,892.***	Authorizes the Exchange to enter into information sharing agreements with federal and state agencies and other states' exchanges (with adequate protections for confidentiality). § 7003(3). Requires other State agencies to provide technical assistance, § 7008(7), and Attorney General to provide legal assistance. § 7008(8).	Authorizes the Exchange to enter into information sharing agreements with federal and state agencies and other states' exchanges (with adequate protections for confidentiality). § 7003(3). Requires other State agencies to provide technical assistance, § 7010(7), and Attorney General to provide legal assistance. § 7010(8). Superintendent authorized to coordinate with Exchange. § C-3.	Recognizes that ACA requires coordination with state agencies and that overall coordination may be less complex if the exchange is located within a state or quasi-state agency. (ACHSD p. 43)	Exchange should be established under the Commissioner of Professional and Financial Regulation. Accordingly, it will be subject to current rules and practices that exist for coordination among state agencies. Proposed Legislation § 7003(4).
20. <u>Exchange Subject to State Licensing</u>: Whether the Exchange should be exempt from the State's insurance producer or consultant licensing requirements or whether the Exchange or its employees need to obtain such a license.	Does not exempt the Exchange from any licensing requirements that would apply to the Exchange in performing duties typically performed by an insurance producer or consultant. Exchange does not have the authority to exempt any carriers from state licensure or solvency requirements. § 7009(4).	Does not exempt the Exchange from any licensing requirements that would apply to the Exchange in performing duties typically performed by an insurance producer or consultant. Exchange does not have the authority to exempt any carriers from state licensure or solvency requirements. To the contrary, Bill expressly provides that licensing requirements continued to apply to issuers of health plans that are certified to participate in the Exchange. § 7011(4); § 4319(1).	--	Exchange itself should not be subject to licensing requirements. However, employees of the Exchange should not be permitted to engage in activities that would otherwise require state licensing. Proposed Legislation § 7009(4).

Decision Point(s)*	LD 1497†	LD 1498‡	Recommendations By Committee Reports‡	Advisory Committee Recommendation
21. **Entities Eligible to Contract with Exchange:** (a) Whether to authorize the Exchange to enter into agreements with "eligible entities" to carry out one or more of the responsibilities of the Exchange. ACA § 1311(f)(3). (b) Whether to define "eligible entities" by reference to ACA § 1311(f)(3)(B) or by using the less precise NAIC model legislation definition: ACA prohibits entities who are within the same controlled group of corporations as (under common control with) a health insurance issuer within the meaning of IRC § 52(a) or (b). The NAIC model legislation uses the term "affiliates." ***Exchange remains responsible for ensuring that all federal requirements related to contracted functions are met. 45 C.F.R. § 155.110(b) (prop.).*** ***HHS invites comment on*** • extent regulation should place conflict of interest requirements on contracted entities. 76 Fed. Reg. at 41,872. • coordination with web-based entities for performing outreach and enrollment functions of the Exchange. 76 Fed. Reg. at 41,878.	Allows the Exchange to contract with "eligible entities" to perform one or more of the responsibilities of the exchange. Defines "eligible entities" to include the MaineCare program or any entity that has experience in individual and small group health insurance. Uses the NAIC model legislation definition to carves out a health carrier or an "affiliate" of a health carrier from the definition of eligible entity. § 7003(2).	Allows the Exchange to contract with "eligible entities" to perform one or more of the responsibilities of the exchange. Defines "eligible entities" to include the MaineCare program or any entity that has experience in individual and small group health insurance. Uses the NAIC model legislation definition to carves out a health carrier or an "affiliate" of a health carrier from the definition of eligible entity. § 7003(2).	--	The Exchange should be permitted to outsource functions to eligible entities. Proposed Legislation § 7003(3).

Decision Point(s)*	LD 1497†	LD 1498^	Recommendations By Committee Reports‡	Advisory Committee Recommendation
22. <u>Navigators</u>: Whether to impose any additional requirements on Navigators in the Exchange beyond the minimum in ACA. § 1311(i). Whether such decisions can or should be delegated to the Exchange. ***Navigators must not be a health insurance issuer or receive direct or indirect consideration from an issuer in connection with enrollment of individuals. 45 C.F.R. § 155.210(c) (prop.).*** ***In order to receive grant:*** • Navigators must have relationships with employers, employees, or consumers likely to be eligible; and be capable of carrying out duties. 45 C.F.R. § 155.210(b)(1) (prop.). • Navigator must not have conflict of interest during term. 45 C.F.R. § 155.210(b)(1)(iv) (prop.). HHS invites comment on whether there should be additional requirements. 76 Fed. Reg. 41,877. • Exchange must include as Navigators entities from at least two categories (community and consumer-focused groups, trade and professional organizations, commercial fishing, ranching and farming organizations, chambers of commerce, unions, resource partners of the SBA, agents and brokers, or other entities). 45 C.F.R. § 155.210(b)(2) (prop.).	Requires any navigator to be licensed as a producer. § 7012.	Exchange will select entities qualified to serve as navigators, in accordance with federal standards. However, an individual licensed as an insurance producer may serve as a navigator in the SHOP Exchange, but not in the individual Exchange. § 7010(2)(T).	Navigators must be accountable and qualified with consideration of the need for licensing. Should consider role for insurance producers, especially small businesses, but need to avoid conflict of interest and determine compensation. (JSC p. 6)	Navigators should be required to meet any training and registration or licensing requirements established by the Bureau of Insurance in consultation with the Exchange and DHHS. Proposed Legislation § 7008(2)(N).

Decision Point(s)*	LD 1497†	LD 1498*	Recommendations By Committee Reports‡	Advisory Committee Recommendation
23. <u>Participation by Brokers and Agents</u>: Whether to allow agents and brokers to assist individuals enrolling in plans through the Exchange..††† ACA § 1312(e). ***Exchange may allow agents and brokers to enroll qualified individuals, employers, or employees in plans and to assist individuals with advance payments of the premium tax credit and cost-sharing reductions. However, an agent/broker serving as a Navigator may not receive any financial compensation from an issuer for helping an individual or small group select a specific plan. 45 C.F.R. § 155.210 (prop.); 76 Fed. Reg. at 41,878.***				Agents/brokers should be permitted to participate in the Exchange. Proposed Legislation § 7008(2)(T).
24. <u>Auditing and Reporting</u>: Whether to grant specific authority to the insurance commissioner (in Maine, Superintendent of the Bureau of Insurance) to investigate the affairs of the Exchange, examine the properties and records of the Exchange, or require the Exchange to provide periodic reporting on its activities. ACA § 1311.	Subjects Exchange to annual audit by State Auditor with a copy of the audit to be provided to the Superintendent (among others). Also requires Board to provide annual report (beginning Feb. 1, 2015) regarding operation of the Exchange to Governor and joint committees of Legislature with jurisdiction. § 7008(4), (6). Does not give specific authority to Superintendent to investigate the affairs of the Exchange, but it does give Superintendent the authority to approve plan of operation for the Exchange. § 7006(2).	Subjects Exchange to annual audit by State Auditor with a copy of the audit to be provided to the Superintendent (among others). Also requires Board to provide annual report (beginning Feb. 1, 2015) regarding operation of the Exchange to Governor and joint committees of Legislature with jurisdiction. § 7010(4), (6). Requires website publication of average costs of licensing, regulatory fees, and other payments required by the Exchange; the administrative costs to the Exchange; and money lost to waste, fraud, and abuse. § 7010(11). Does not give specific authority to Superintendent to investigate the affairs of the Exchange.	--	The Exchange will be subject to the oversight of the Commissioner of Professional and Financial Regulation. Proposed Legislation § 7003(1).

††† The Exchange should ensure that it allows brokers and agents who currently market to (and have relationships with) small employers to participate in the Exchange because small employers are likely to look to their existing agents and brokers to advise them on whether to purchase coverage through the Exchange.

Decision Point(s)*	LD 1497†	LD 1498*	Recommendations By Committee Reports‡	Advisory Committee Recommendation
25. <u>Finances/Revenues</u>: Whether to give the Exchange authority to charge assessments or user fees to health carriers or otherwise generate funding necessary to support its operations, to ensure that the Exchange is self-sustaining by 2015. ACA § 1311(d)(5)(A). Whether legislation should impose a cap on the amount the Exchange may collect. ***In order to be self-sustaining, may charge assessments or user fees on participating issuers; any user fees must be announced in advance of the plan year. 45 C.F.R. § 155.160(b)(4) (prop.). HHS invites comment on whether there should be other limitations on how and when user fees are charged.*** **See *76 Fed. Reg. at 41,874.*** ***The Exchange also "may otherwise generate funding for Exchange operations." 45 C.F.R. § 155.160(b)(2) (prop.). HHS contemplates "broad flexibility to generate funds." 76 Fed. Reg. at 41,874.*** ***The State must develop a plan for ensuring that the Exchange will have sufficient funding. 76 Fed. Reg. at 41,874; 45 C.F.R. § 155.105(c)(1) (prop.).***	Exchange has authority to charge assessments or user fees to health carriers or otherwise generate funding necessary to support its operations. § 7010(1). Revenues and expenditures of the Exchange are subject to legislative approval. § 7008(3).	Requires monthly access payments to the Exchange (currently 2.14% of claims to Dirigo), which may be used to support the following: • administration and operations expenses; • Maine Quality Forum; • consumer assistance and navigator programs; • coverage subsidies for sole proprietors and small businesses; • if funds available (after meeting above 4 uses), subsidies for benefits in addition to the minimum essential health benefits, or reductions to the access payments. §§ A-35, A-37. Creates Maine Health Benefit Exchange Enterprise Fund for deposit of Exchange funds. § 7012. Revenues and expenditures of the Exchange are subject to legislative approval. § 7010(3).	Outlines pros and cons of 8 policy options originally presented by Governor's Steering Committee with respect to the current access payments to Dirigo. The 8 policy options include using the access payments for subsidies of small business, subsidies for employees of small business, administrative costs of the exchange, a reinsurance program, subsidies for individuals purchasing coverage, quality improvement initiatives, or subsidies for benefits in addition to federal minimum essential health benefits. (JSC p. 14-16; ACHSD p. 66-69)	• Exchange should recommend to the Commissioner of Professional and Financial Regulation a budget for being self-sustaining by 2015. Budget will include a recommendation regarding the source for the revenue. Any revenue-raising initiatives must be enacted by the Legislature. Proposed Legislation § 7008(3). • The State should apply to the federal government for funds to study funding options for the Exchange.
26. <u>Rulemaking Authority</u>: Whether the Exchange or the agency responsible for administration or oversight of the Exchange will have rulemaking authority.	Exchange has rulemaking authority. § 7008(5).	Exchange has rulemaking authority. § 7010(5).	--	The Exchange should have rulemaking authority governed by state Administrative Procedures Act. Proposed Legislation § 7008(4). Any Exchange adjudication shall be conducted in accordance with the state Administrative Procedures Act and the ACA. Proposed Legislation § 7008(6).
D. Plans Offered By Exchange				
27. <u>Qualified Plan Certification</u>: Whether to impose any certification standards for qualified health plans beyond the minimum in ACA, considering factors such as consumer choice and additional costs, in light of the value to enrollees provided by the proposed standards. ACA § 1311(c)(1).	Follows the minimum certification standards required under ACA § 1311(c)(1) and reflected in the NAIC model legislation. § 7009(1).	Follows the minimum certification standards required under ACA § 1311(c)(1) and reflected in the NAIC model legislation. § 7011(1).	--	The enabling legislation should include only the minimum certification standards. Proposed Legislation § 7009(1).

Decision Point(s)*	LD 1497†	LD 1498*	Recommendations By Committee Reports‡	Advisory Committee Recommendation
28. <u>Qualified Plan Certification</u>: Whether the Exchange should delegate all or part of the plan certification function to the insurance commissioner pursuant to the commissioner's rate and form review responsibilities. ACA § 1311(c)(1).	Exchange may certify health benefit plan as a qualified health plan only if premium rates and contract language have been approved by Superintendent. § 7009(1)(B). No provision of Bill intended to preempt or supersede the Superintendent's authority to regulate. § 7011. Exchange retains authority to make rules regarding certification requirements and make determination whether plan is in interest of individuals and employers. § 7009(1)(F), (G).	Exchange may certify health benefit plan as a qualified health plan only if premium rates and contract language have been approved by Superintendent. § 7011(1)(B). Superintendent retains this authority. § C-3. No provision of Bill intended to preempt or supersede the Superintendent's authority to regulate. § 7014. Exchange retains authority to make rules regarding certification requirements and make determination whether plan is in interest of individuals and employers. However, Superintendent is authorized to enter into agreements with Exchange to assume authority relating to certification of qualified plans or authorization of a carrier to participate in the Exchange. § 7011(1)(F), (G), § 4319 of C-2 .	--	• Rates and forms should be subject to existing requirements of Title 24-A. Proposed Legislation § 7009(1)(B). • Exchange should otherwise retain responsibility for certifying issuers and plans. Proposed Legislation § 7009(1).
29. <u>Additional Benefits</u>: Whether to require additional benefits in the Exchange beyond the essential health benefits (and, if so, how the State will assume those costs). ACA § 1311(d)(3).	--	Requires the Dep't of Insurance to review and evaluate the HHS minimum essential health benefits package; hold a public hearing on whether to include additional benefits; and submit a report and recommendations to the legislature. § D-1. Provides that if funds are available (after supporting the administration and operation of the Exchange), the access payments (2.14% of claims) may be used to subsidize benefits in addition to the minimum essential health benefits. § A-35.	Noting that current state law may require health benefits not mandated by federal law, identifies issue and potential factors to consider once federal regulations released. (JSC p. 13; ACHSD p. 20-21)	The state should not require qualified health plans to provide benefits in addition to essential health benefits.
30. <u>Basic Health Program</u>: Whether the Exchange should establish a basic health program to provide health coverage to individuals between 133-200% of FPL instead of offering these individuals coverage through the Exchange. ACA § 1331.	--	Requires Exchange to consider establishment of basic health program for eligible individuals. § 7010(2)(O).	Without making specific recommendations, provides pros and cons of providing basic health plan to individuals between 133-200% of FPL. (JSC p. 9-10; ACHSD p. 48-49)	Exchange and DHHS should evaluate whether Basic Health Program is in best interests of State and its citizens.

Decision Point(s)*	LD 1497†	LD 1498°	Recommendations By Committee Reports‡	Advisory Committee Recommendation
31. **Regulation Beyond Exchange Plans:** Whether to extend any of the Exchange requirements to the outside insurance market, beyond what is required in ACA.	--	As a condition to participation in Exchange, carriers that sell products outside of Exchange must offer outside of the Exchange any products available in the Exchange. § 7010(2)(K).	Supports requiring health plans in and out of the exchange to be subject to the same insurance rules. (JSC p. 5)	Exchange requirements should not be extended to the outside insurance market beyond what is required in ACA.

Appendix A: Section 1311(d)(4) of ACA

(4) FUNCTIONS.— An Exchange shall, at a minimum—

(A) implement procedures for the certification, recertification, and decertification, consistent with guidelines developed by the Secretary under subsection (c), of health plans as qualified health plans;

(B) provide for the operation of a toll-free telephone hotline to respond to requests for assistance;

(C) maintain an Internet website through which enrollees and prospective enrollees of qualified health plans may obtain standardized comparative information on such plans;

(D) assign a rating to each qualified health plan offered through such Exchange in accordance with the criteria developed by the Secretary under subsection (c)(3);

(E) utilize a standardized format for presenting health benefits plan options in the Exchange, including the use of the uniform outline of coverage established under section 2715 of the Public Health Service Act;

(F) in accordance with section 1413, inform individuals of eligibility requirements for the Medicaid program under title XIX of the Social Security Act, the CHIP program under title XXI of such Act, or any applicable State or local public program and if through screening of the application by the Exchange, the Exchange determines that such individuals are eligible for any such program, enroll such individuals in such program;

(G) establish and make available by electronic means a calculator to determine the actual cost of coverage after the application of any premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402;

(H) subject to section 1411, grant a certification attesting that, for purposes of the individual responsibility penalty under section 5000A of the Internal Revenue Code of 1986, an individual is exempt from the individual requirement or from the penalty imposed by such section because—

(i) there is no affordable qualified health plan available through the Exchange, or the individual's employer, covering the individual; or

(ii) the individual meets the requirements for any other such exemption from the individual responsibility requirement or penalty;

(I) transfer to the Secretary of the Treasury—

(i) a list of the individuals who are issued a certification under subparagraph (H), including the name and taxpayer identification number of each individual;

(ii) the name and taxpayer identification number of each individual who was an employee of an employer but who was determined to be eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 because—

(I) the employer did not provide minimum essential coverage; or

(II) the employer provided such minimum essential coverage but it was determined under section 36B(c)(2)(C) of such Code to either be unaffordable to the employee or not provide the required minimum actuarial value; and

(iii) the name and taxpayer identification number of each individual who notifies the Exchange under section 1411(b)(4) that they have changed employers and of each individual who ceases coverage under a qualified health plan during a plan year (and the effective date of such cessation);

(J) provide to each employer the name of each employee of the employer described in subparagraph (I)(ii) who ceases coverage under a qualified health plan during a plan year (and the effective date of such cessation); and

(K) establish the Navigator program described in subsection (i).